verses two prior decisions on the same point. *Bouton* v. *Welch*, 170 N. Y. 554; *Soduil* v. *Kidd*, 64 Hun (N. Y.) 585. It would seem unfortunate that these latter holdings have been disturbed, for, even if the question were *res integra*, they would appear to furnish the more reasonable construction of the Code.

BOOKS AND PERIODICALS.

I. LEADING LEGAL ARTICLES.

RESERVED POWER OF STATE TO CONTROL CORPORATION. — The theoretical basis of the state's power to alter or modify corporate charters, the express reservation of which has been common since the decision of the Dartmouth College case, is analyzed in a series of three articles in the American Law Register. *The Limitations of the Power of a State under a Reserved Right to Amend or Repeal Charters of Incorporation*, by Horace Stern, 53 Am. L. Reg. 1, 73, 145 (Jan.–Mar. 1905). The author asserts that if his contentions be correct, "almost the entire law on the subject of the control of the state over corporations must be rewritten." He attacks the decision in the Dartmouth College case, and would prefer to rest it upon a ground different from that which the court assigned as the basis for its conclusion. The line of argument pursued may be briefly summarized as follows: The incorporators to whom a charter is issued have previously formed among themselves a contract analogous to that of a partnership. The terms of this agreement prescribe the scheme of organization and membership. Its validity is independent of the legislative act of incorporation. Whether or not the charter which confers the franchise of incorporation is a contract between the state and the incorporators, any statute which impairs the obligation of this contract previously made between the incorporators is unconstitutional. The act of the legislature of New Hampshire in amending the charter of Dartmouth College, so as to increase the number of trustees, violated the preliminary contract by which the original incorporators agreed among themselves that the number of trustees should be twelve and no more.

The writer proceeds to point out that under the view generally accepted since Marshall's famous opinion, the state, as a contracting party to the charter, ought to be regarded as acting in a private, not a sovereign, capacity. Likewise the power reserved by statute to amend or repeal a charter is to be considered "a power reserved by the state as a private party to a contract, and not as a sovereign agency of government." The legal position of the state with reference to the charter therefore becomes identical with that of a private individual who in his contract has reserved the right to rescind at his pleasure.

The distinction between these two contracts — one between the state and the incorporators, the other between the incorporators themselves — should, in the author's opinion, determine the limits of the revoking power of the state. On the one hand, the state should be able to alter or revoke all rights conferred in the charter, including the franchise to exist as a corporation. It should have the right to impose any condition it chose upon the corporation, and to provide that compliance therewith should be the price of the continued enjoyment of the franchise. Thus the state should have power to recall the right to regulate its rates conferred by charter upon a public service corporation, and to refuse to allow it to exact reasonable charges or any charges at all for its services. But on the other hand, the state should not be able to deprive the corporation of its property or rights which are not conferred by the charter. The state, not being party to the contract of the incorporators *inter se*, should be unable to reserve or exercise a power to alter such contract; hence the internal management of the corporation and the rights of its members, as determined by the contract made prior to the act of incorporation, it should not be within the power of the state to modify.